In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 507

DAWSON COUNTY, MONTANA, AND PRAIRIE COUNTY, MONTANA, PETITIONERS

v.

MARY HAGEN, E. B. CLARK, MINNIE R. EVANS, UNITED STATES OF AMERICA, EDNA YALE, ALLEN W. YALE, RUBY YALE, RUTH PETTERSON, HANS PETTERSON, AND SCOTTISH AMERICAN MORTGAGE COMPANY, LIMITED

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The petition for a writ of certiorari seeks to review a decision of the United States Court of Appeals for the Ninth Circuit (*Dawson County, Montana, et al.*, v. *Hagen, et al.*, 177 F. 2d 186; R. 181-182). It is the purpose of this memorandum to state the position of the United States with respect to this litigation.

In condemnation proceedings brought by the United States, the amount representing just compensation for the property had been paid into court (R. 90), and $3,642.92 had been distributed to Dawson and Prairie Counties, Montana (R. 98-99). The

trial court having concluded that this distribution was erroneous, entered judgment against the United States in favor of Mary Hagen, et al., the defendant bondholders of the Upper Glendive-Fallon Irrigation District, for $3,642.92, and a judgment in favor of the United States against Dawson and Prairie Counties, Montana, for the same amount (R. 155-156). Upon appeal by the United States (R. 173) the court of appeals recognized the Government was not responsible for errors in distribution of the amount representing just compensation for the land condemned, and hence its judgment modified that of the district court to eliminate any requirement that the United States pay any sum in addition to the amount previously awarded (R. 182-183). Petitioners are not assigning this phase of the decision of the court of appeals as error. Their petition relates to the distribution of funds paid by the United States as just compensation, no claim being made that the amount owing by the United States is more than the sum that has been paid into court.

Since the United States is not concerned with proceedings for distribution (*United States* v. *Dunnington,* 146 U. S. 338, 352), it has no interest in the present petition. Accordingly, it neither joins in nor opposes the petition for writ of certiorari.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1950.

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